

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF DELAWARE

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JAMES H. GORBNEY, JR., : CIVIL ACTION
Administrator of the
ESTATE of MARISSA ROSE : NO. 04-4098
FISHMAN, Deceased

:

-vs-

:

RICHARD LONGWELL

:

- - -

JAMES H. GORBNEY, JR., : CIVIL ACTION
Administrator of the
ESTATE of MARISSA ROSE : NO. 04-4118
Deceased

:

-vs-

:

ASHLAND CONSTRUCTION
COMPANY, INC., et al

:

- - -

Oral deposition of ERIC C. FISHMAN,
taken on behalf of the Defendant, Richard
Longwell, in the Law Offices of MURPHY, SPADARO &
LANDON, 1011 Centre Road, Wilmington, Delaware,
on Wednesday, April 5, 2006, commencing at or
about 2:15 p.m., before Colleen A. Young, Court
Reporter - Notary Public.

- - -

B & R SERVICES FOR PROFESSIONALS, INC.
235 SOUTH 13th STREET
PHILADELPHIA, PENNSYLVANIA 19107
(215) 546-7400
B&R Services for Professionals, Inc.

1 that.

2 Q. Why did you contact Kline & Specter?

3 A. For the death of my daughter Marissa Rose.

4 Q. Did you consult with your wife at the time,
5 Rochelle, in the course of contacting Kline &
6 Specter about that matter?

7 A. Contacted my...

8 Q. Did you discuss it with your wife, the fact
9 that you were contacting Kline & Specter at that
10 time?

11 A. No.

12 Q. Was she involved at all in dealing with
13 Kline & Specter?

14 A. None.

15 Q. When you contacted Kline & Specter, did you
16 go there and meet with someone?

17 A. I did.

18 Q. Do you remember who that was?

19 A. Tom Kline. And also Diane Hockstein, Rob
20 Ross. I think that was it. Yeah, that was it.

21 Q. What was the substance of your discussion
22 with them at that time?

23 MR. VAN NAARDEN: I object. For
24 purposes of this deposition I don't know --
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1 well, we represent the estate at this time.

2 There may have been some relationship between
3 Eric Fishman and our firm prior to the
4 appointment of the administrator of the
5 estate, and I will assert a privilege if
6 there are any type of attorney/client
7 relationship at that time. So I don't think
8 it's appropriate for him to testify about any
9 contact he had with our firm relating to the
10 claim of his or potential claim for his
11 deceased daughter.

12 BY MR. MAKARA:

13 Q. Is it your understanding, Mr. Fishman, that
14 you were represented by Kline & Specter at some
15 point?

16 A. Yes.

17 Q. Okay. To the extent that I'm going to ask
18 you questions today about this claim by the
19 Estate of Marissa Rose Fishman, would you be
20 willing to waive any potential attorney/client
21 privilege between you and Kline & Specter?

22 MR. VAN NAARDEN: Again, we don't
23 represent Mr. Fishman for purposes of this
24 deposition, but, the attorney/client

1 privilege would not terminate, or any
2 discussions that we had or did not have with
3 Mr. Fishman at that time wouldn't terminate
4 upon our being appointed as counsel for the
5 estate. So I would instruct him not to
6 answer.

7 MR. MAKARA: Agreed. But he certainly
8 can waive the privilege if he so chooses, and
9 I don't think you can instruct him to answer.
10 In any case, it's up to you, Mr. Fishman.

11 THE WITNESS: I would rather not.

12 MR. LANDON: If I can have a
13 clarification. I understand that you're not
14 representing Mr. Fishman for purposes of the
15 deposition today. Is your firm currently
16 representing Mr. Fishman for any purposes?

17 MR. VAN NAARDEN: No.

18 BY MR. MAKARA:

19 Q. Mr. Fishman, if you just look at the
20 documents that I handed you. Turning to the
21 second page, that document appears to be signed
22 by Thomas R. Kline, Esquire, and I think if I'm
23 reading it correctly it is dated January 11th of
24 2003.

1 Is that your understanding of when
2 this document would have been prepared?

3 A. I guess you would be correct. I'm not sure
4 of the exact -- whether that's a seven or a one.
5 I'm not sure.

6 Q. Whatever it is, it is.

7 A. Yeah.

8 Q. If you would turn to the fourth page. The
9 title of that document is Petition of Probate
10 Estate and Fiduciaries Code to Grant Letters of
11 Administration. Do you see that?

12 A. I do.

13 Q. What was your understanding of the purpose
14 of this document being filed?

15 A. Do I need to...

16 Q. I'm not asking you about anything that your
17 attorney told you, I just want your understanding
18 of why this document was being filed in Delaware
19 County?

20 A. It's being filed in Delaware County because
21 that's where the -- where myself and my ex-wife
22 resided in Delaware County.

23 Q. But do you know what this document was
24 asking for? What was its purpose in being filed

1 with the court?

2 A. I guess it's to grant the letters of
3 administration.

4 Q. With you as the administrator, correct?

5 A. Correct.

6 Q. If you go to paragraph five of that
7 document it says, Petitioner, Eric C. Fishman,
8 seeks to open the estate of his deceased
9 daughter, Marissa Rose Fishman, for the purposes
10 of initiating a civil action and/or conducting an
11 investigation regarding the death of Marissa Rose
12 Fishman which occurred on August 30th, 2002,
13 while she was in the custody and control of her
14 natural mother, Rochelle Fishman, and/or
15 grandparents, Barbara and Richard Longwell at the
16 Longwell residence.

17 Do you see that?

18 A. I do see that.

19 Q. Did you have an opportunity to review this
20 document before it was filed by your attorneys?

21 A. I did.

22 Q. And if you skip to the next to the last, or
23 third from the last page there, your name appears
24 in what appears to be a signature. Is that your

1 signature on this document?

2 A. That's my signature.

3 Q. And you did sign this document before it
4 was filed by your attorney at that time?

5 A. Yes.

6 Q. What I just said that is set forth in
7 paragraph five, is that true and accurate as far
8 as you are concerned?

9 A. It is.

10 Q. Can you tell me why it was that you thought
11 that an investigation regarding the death of
12 Marissa Rose Fishman should be conducted?

13 A. Considering that I was at work, Airbase
14 Carpet Mart, and Marissa Rose, who was at the
15 grandparents' home, and nobody has ever come to
16 me to tell me what actually happened in that
17 house.

18 Q. Did you ever discuss what happened with
19 your wife?

20 A. Absolutely not. They would never -- nobody
21 has discussed, communicated, or in any fashion,
22 my ex-wife, or my ex in-laws, or anybody else
23 that was in that house.

24 Q. So you've never discussed the circumstances
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1 with Richard Longwell either?

2 A. My ex-father-in-law.

3 Q. Or Barbara Longwell?

4 A. Correct.

5 Q. And that's at any time since the accident
6 happened?

7 A. Absolutely.

8 Q. Did you ever discuss with either your wife,
9 or Barbara or Richard Longwell, the prospect or
10 the idea of filing a lawsuit based upon the
11 accident?

12 A. Absolutely not.

13 Q. Did you believe at the time of the filing
14 of this document that you should be appointed as
15 the administrator of the Estate of Marissa Rose
16 Fishman as opposed to your wife Rochelle?

17 A. I did.

18 Q. Why?

19 A. I felt that being the father I was entitled
20 to that.

21 Q. Is there any reason that you didn't think
22 that your wife should be the administrator of the
23 estate?

24 A. I did not.

1 Q. You did not think that?

2 A. No, no, no. I thought not.

3 Q. Why didn't you think she should be the
4 administrator?

5 A. I just decided that I should be.

6 Q. Now, if you skip down to paragraph 12 of
7 that document, that says, Eric C. Fishman,
8 natural father of Marissa Rose Fishman, deceased,
9 requests he be appointed Administrator of the
10 Estate of Marissa Rose Fishman, deceased, so that
11 he may, amongst other things, retain counsel to
12 investigate the death of Marissa Rose Fishman,
13 and institute a lawsuit against any and all
14 parties responsible for the injuries to and death
15 of Marissa Rose Fishman, deceased.

16 Is that true and accurate?

17 A. That's true.

18 Q. Why was it that you thought it would be
19 necessary to instrument a lawsuit at the time
20 this document was filed?

21 A. I lost my child at that house, and was
22 never -- nobody has ever come forward to tell me
23 anything about it. I felt that was my obligation
24 to my daughter.

1 Q. Did you believe that someone was at fault
2 in the course of that accident?

3 A. I would presume so. Absolutely.

4 Q. Why?

5 A. Considering there was, I'm going to
6 estimate, there was 14 people in that house, and
7 there were 14 responsible adults in that house
8 there was only one child, 20 months.

9 Q. Did you ever have any type of court hearing
10 or appearance after the time that this petition
11 was filed?

12 A. A court appearance?

13 MR. VAN NAARDEN: You mean as it
14 relates to the appointment of the
15 administrator?

16 MR. MAKARA: Right. Based upon this
17 petition.

18 THE WITNESS: I haven't appeared in
19 court on any other situation other than with
20 Matt Casey to -- within Delaware County with
21 Mr. Gorbey, I guess being...

22 BY MR. MAKARA:

23 Q. Let me phrase it to you this way. This
24 petition -- from what we just read, this petition

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1 is asking the court to appoint you as the
2 administrator of the estate, correct?

3 A. Correct.

4 Q. Did that ever happen?

5 A. It did.

6 Q. You were appointed the administrator of the
7 estate?

8 A. I think Mr. -- maybe I'm getting confused.
9 I think Mr. Gorbey was appointed administrator of
10 the estate.

11 Q. Okay.

12 A. That's...

13 Q. Do you have any understanding as to why you
14 were not appointed administrator of the estate?
15 In other words, this petition was not granted by
16 the court.

17 A. Right.

18 Q. Do you know why?

19 A. I believe because neither myself or my
20 wife, that Mr. Gorbey had to be appointed.

21 Q. And you did go to court at some point to
22 discuss that, or present that to a judge, there
23 was some type of court appearance?

24 A. There was.

1 Q. And you were present at that time?

2 A. I don't know if I was present. I'm not
3 sure. I'm not sure.

4 Q. Do you know, as you sit here today, whether
5 your wife, your ex-wife, agreed with the idea of
6 filing a lawsuit on behalf of the Estate of
7 Marissa Rose Fishman?

8 A. Whether he agreed?

9 Q. Yes.

10 A. I haven't had any correspondence.

11 Q. So you wouldn't know one way or the other?

12 A. I haven't had any correspondence.

13 Q. Did you ever discuss the filing of a
14 lawsuit on behalf of Marissa, your daughter, with
15 Mr. Gorbey?

16 A. Personally with Mr. Gorbey?

17 Q. Yes.

18 A. No, I haven't spoken to Mr. Gorbey.

19 Q. Did you ever discuss the filing of a
20 lawsuit on behalf of Marissa with anyone at Kline
21 & Specter?

22 MR. VAN NAARDEN: Again, I object.

23 To the extent that it calls for privileged
24 information during a limited time period when
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1 we represented him for purposes of opening an
2 estate, I will instruct him not to answer.

3 BY MR. MAKARA:

4 Q. Okay. I will pose that question to you
5 limited to the time period after your petition
6 had been denied, and since Mr. Gorbey has been
7 appointed as the administrator, have you had any
8 discussions since then with anyone from Kline &
9 Specter?

10 A. No, I have not.

11 Q. Going back to the incident we talked about
12 in August of 2002 that happened in Longport, New
13 Jersey, were the police involved in that incident
14 at all?

15 A. What report on what incident in Longport,
16 New Jersey?

17 Q. You stated that your wife was at Longport,
18 down the shore in Longport visiting.

19 A. No. No. I stated that she was visiting
20 her parents in Longport, came back, and drove
21 back to the marital home, and that's when she
22 drove up the driveway.

23 Q. Were you in Longport in August of 2002?

24 A. In Longport in 2002? I guess. A specific
 B&R Services for Professionals, Inc.

1 time?

2 Q. On that -- on that weekend, or whatever
3 time period it was that your wife took the
4 children and left, had you been in Longport that
5 day or the day before?

6 A. Yeah. I was in Longport, New Jersey,
7 correct.

8 Q. That same day?

9 A. No, I don't believe it was the same day,
10 but I'm trying to remember. It might have been
11 the day before or so.

12 Q. Was there any dispute between you and your
13 wife that occurred while the two of you were in
14 Longport, New Jersey in August of 2002?

15 A. No.

16 Q. On the day of the accident, Marissa's
17 accident, how did you find out about it?

18 A. I received a phone call from my
19 ex-brother-in-law. I was at Airbase Carpet Mart
20 working in the same office with my father-in-law.
21 Ex-father-in-law.

22 Q. What location?

23 A. Here in Delaware. In New Castle, Delaware.
24 It's the main headquarters.

1 ended?

2 A. Yes.

3 Q. Did you ever hire another law firm to
4 advise you with respect to your potential rights
5 as a wrongful death plaintiff in a potential
6 lawsuit that you could file on your own against
7 the potentially responsible parties?

8 MR. VAN NAARDEN: Objection. You
9 can answer.

10 THE WITNESS: No. No.

11 MR. LANDON: That's not a
12 privileged objection.

13 MR. VAN NAARDEN: You can answer it if
14 you know.

15 THE WITNESS: I haven't.

16 BY MR. LANDON:

17 Q. So the Kline & Specter firm was the only
18 firm that you consulted with whatsoever with
19 respect to your daughter's death?

20 A. Yes.

21 Q. Is that true?

22 Did you ever make a decision not to
23 file a wrongful death claim on your own behalf
24 for the death of your daughter?

1 A. No.

2 Q. Did you know that you could have if you had
3 done so within two years of her death?

4 A. I was informed.

5 Q. Did you make a decision not to do that?

6 A. Uh-huh. I just -- I didn't bother.

7 Q. Was there an autopsy done?

8 A. That's a very good question. A very good
9 question.

10 I had instructed to find out the
11 cause of death and also to have an autopsy done.
12 Barbara Longwell went back into that hospital --
13 came into that hospital and had requested not to
14 have autopsy due to the -- because it's in the
15 Jewish religion not to have an autopsy done.
16 Barbara Longwell -- I'm the father. I went back
17 and instructed to have an autopsy done on the
18 body.

19 Q. It didn't happen?

20 A. You tell me. You have all the records.

21 Q. You don't know?

22 A. Exactly. You tell me. Was that --

23 Q. I don't know.

24 A. Okay. Do I? I don't know either. I don't